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GOOGLE INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ORACLE AMERICA, INC.,

Plaintiff,

v.

GOOGLE INC.,

Defendant.

Case No. CV 10-03561 WHA

**JOINT STIPULATION AND
[PROPOSED] ORDER RE TESTIMONY
OF JONATHAN SCHWARTZ**

Dept.: Courtroom 8, 19th Floor
Judge: Hon. William H. Alsup

STIPULATION

WHEREAS Oracle filed a summary motion *in limine* seeking to exclude portions of former Sun CEO Jonathan Schwartz's prior testimony from the retrial in this matter, ECF 1696 at 18;

WHEREAS Google filed a summary opposition opposing Oracle's motion *in limine*, ECF 1696 at 19;

WHEREAS the Court ordered full briefing on Oracle's summary motion *in limine* from both parties, ECF 1723;

WHEREAS Oracle and Google (collectively the "Parties") conferred and agreed that a mutual stipulated agreement would resolve Oracle's outstanding motion *in limine* without the need for further motion practice;

NOW, THEREFORE, the Parties AGREE AND STIPULATE that:

To resolve Oracle's Summary Motion in Limine No. 8, ECF 1696 at 18, Google agrees not to attempt to elicit from Mr. Schwartz or use at trial the testimony by Mr. Schwartz that "we didn't have any grounds" for litigation against Google over Android. If Oracle opens the door to this testimony by asking Mr. Schwartz or any other witness whether Sun had legal grounds to sue Google over Android, by presenting testimony (solicited or not) from any Oracle witness on this issue, or through attorney argument, Google will thereafter not be limited by this agreement. If Google believes the door has been opened to this issue, Google agrees to seek clearance from the Court before attempting to use Mr. Schwartz's prior testimony. Nothing in this agreement should be read to limit Oracle or Google from presenting evidence or argument on any issue not specifically identified herein.

1 Dated: April 25, 2016

ORRICK, HERRINGTON & SUTCLIFFE LLP

2
3 By: /s/ Peter A. Bicks
4 PETER A. BICKS

5 Attorneys for Plaintiff
6 ORACLE AMERICA, INC.

7 Dated: April 25, 2016

Keker & Van Nest LLP

8 By: /s/ Robert A. Van Nest
9 ROBERT A. VAN NEST

10 Attorneys For Defendant
11 GOOGLE INC.

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14 **ATTESTATION OF CONCURRENCE**

15 I, Peter A. Bicks, the ECF User whose ID and password are being used to file this Joint
16 Stipulation and [Proposed] Order Regarding the Testimony of Jonathan Schwartz, hereby attest
17 that Robert Van Nest has concurred in this filing.

18 Dated: April 25, 2016 By: /s/ Peter A. Bicks

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20
21 **[PROPOSED] ORDER**

22 The foregoing stipulation is approved, and Oracle's Summary Motion in Limine Re. the
23 Testimony of Jonathan Schwartz, ECF 1696 at 18, is denied as moot without prejudice to refile
24 in the event it is no longer moot. IT IS SO ORDERED.
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27 Date: _____

Honorable William H. Alsup
Judge of the United States District Court